

Part 4

Airport Zoning Act

72-10-401 Definitions.

As used in this part, unless the context otherwise requires:

- (1) "Airport" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for these purposes.
- (2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to the landing or taking-off of aircraft.
- (3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this part.
- (4) "Political subdivision" means any municipality, city, town, or county.
- (5) "Structure" means any object constructed or installed by man, including buildings, towers, smokestacks, and overhead transmission lines.
- (6) "Tree" means any object of natural growth.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-402 Declaration with respect to airport hazards.

The Legislature finds that:

- (1) an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity;
- (2) an obstruction of the type that reduces the size of the area available for the landing, taking-off, and maneuvering of aircraft tends to destroy or impair the utility of the airport and the public investment in the airport;
- (3) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;
- (4) it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented;
- (5) this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation; and
- (6) both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests in land.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-403 Airport zoning regulations -- Joint airport zoning board -- Powers of board -- Membership.

- (1)
 - (a) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in this part, airport zoning regulations for the airport hazard area.

- (b) The regulations may divide the area into zones, and, within the zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.
- (2)
 - (a) If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to the airport is located outside the territorial limits of the political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board.
 - (b) The board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by Subsection (1) in the political subdivision within which the area is located.
 - (c) Each joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chair elected by a majority of the appointed members.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-404 Zoning ordinances -- Governing law in event of conflict.

- (1) In the event that a political subdivision has adopted or adopts a comprehensive zoning ordinance regulating the height of buildings, any airport zoning regulations applicable to the same area or a portion of the area may be incorporated in and made a part of comprehensive zoning regulations, and be administered and enforced in connection with the comprehensive zoning regulations.
- (2) In the event of conflict between any airport zoning regulations adopted under this part and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether the other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-405 Airport zoning regulations -- Adoption and amendment -- Airport zoning commission -- Powers and duties.

- (1)
 - (a) An airport zoning regulation may not be adopted, amended, or changed under this part except by action of the legislative body of the political subdivision in question, or the joint board provided for in Subsection 72-10-403(2), after a public hearing at which parties in interest and citizens shall have an opportunity to be heard.
 - (b) At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.
- (2)
 - (a) Prior to the initial zoning of any airport hazard area under this part, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted.

- (b) The commission shall make a preliminary report and hold public hearings before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board may not hold its public hearings or take other action until it has received the final report of the commission.
- (c) If a comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-406 Airport zoning regulations -- Validity, limitations, and restrictions.

- (1)
 - (a) All airport zoning regulations adopted under this part shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this part.
 - (b) In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.
- (2) Any airport zoning regulations adopted under this part may not require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in Subsection 72-10-407(3).

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-407 Permit for new or changed structures or uses -- Nonconforming structures -- Airport hazards -- Application to board of adjustment for variance -- Allowance of variance -- Conditioning permit or variance.

- (1)
 - (a) Any airport zoning regulations adopted under this part may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired.
 - (b) All regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit shall be secured from the administrative agency authorized to administer and enforce the regulations, authorizing the replacement, change, or repair.
 - (c) A permit may not be granted that allows the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or when the application for a permit is made.
 - (d) Except as provided in this Subsection (1), all applications for permits shall be granted.
- (2)
 - (a) Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use the person's property in violation of airport zoning regulations adopted under this part, may apply to the board of adjustment for a variance from the zoning regulations in question.
 - (b) A variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be

contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this part.

- (c) Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this part.
- (3) In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it considers the action advisable to effectuate the purposes of this part and reasonable in the circumstances, so condition a permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-408 Appeals to board of adjustment -- Procedure -- Stay of proceedings -- Hearing and judgment.

- (1) Any person aggrieved, or taxpayer affected, by any decision of any administrative agency made in its administration of airport zoning regulations adopted under this part, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of an administrative agency is an improper application of airport zoning regulations of concern to the governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of the administrative agency.
- (2)
 - (a) All appeals taken under this section shall be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds of the appeal.
 - (b) The agency from which the appeal is taken shall transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- (3)
 - (a) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property.
 - (b) In these cases, proceedings shall not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and on due cause shown.
- (4)
 - (a) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the appeal within a reasonable time.
 - (b) Upon the hearing any party may appear in person or by agent or by attorney.
- (5) The board may, in conformity with the provisions of this part, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make an order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-409 Airport zoning regulations -- Administration and enforcement.

- (1)

- (a) All airport zoning regulations adopted under this part shall provide for the administration and enforcement of the regulations by an administrative agency which may be an agency created by the regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision.
- (b) The administrative agency may not be or include any member of the board of adjustment.
- (2) The duties of any administrative agency designated pursuant to this part shall include that of hearing and deciding all permits under Subsection 72-10-407(1), but the agency may not have or exercise any of the powers delegated to the board of adjustment.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-410 Board of adjustment -- Powers -- Appointment and membership of board -- Hearings and decisions by board -- Meetings -- Adoption of rules.

- (1) All airport zoning regulations adopted under this part shall provide for a board of adjustment to have and exercise the following powers:
 - (a) to hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in Section 72-10-408;
 - (b) to hear and decide any special exceptions to the terms of the airport zoning regulations upon which the board may be required to pass under the regulations;
 - (c) to hear and decide specific variances under Subsection 72-10-407(2).
- (2)
 - (a) If a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment.
 - (b) Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years, by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.
- (3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in the regulations.
- (4)
 - (a) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created.
 - (b) Meetings of the board shall be held at the call of the chair and at other times as the board may determine.
 - (c) The chair, or in the chair's absence, the acting chair, may administer oaths and compel the attendance of witnesses.
 - (d) All hearings of the board shall be public.
 - (e) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating the fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-411 Appeals to district courts -- Procedure -- Findings, judgment, and costs -- Regulations invalid as to one structure or parcel of land.

- (1)
 - (a) Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board, which is of the opinion that a decision of a board of adjustment is illegal, may present to the district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.
 - (b) The petition shall be presented to the court within 30 days after the decision is filed in the office of the board.
- (2)
 - (a) Upon presentation of the petition the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board.
 - (b) The allowance of the writ may not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
- (3)
 - (a) The board of adjustment may not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies of the papers or of any portions as may be called for by the writ.
 - (b) The return shall concisely set forth any other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- (4)
 - (a) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if necessary, to order further proceedings by the board of adjustment.
 - (b) The findings of fact of the board shall be considered by the court unless an objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.
- (5) Costs may not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.
- (6) In any case in which airport zoning regulations adopted under this part, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to an extent, or to be so onerous in their application to a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, the holding shall not affect the application of the regulations to other structures and parcels of land.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-412 Violations of chapter or rulings -- Misdemeanor -- Remedies of political subdivisions.

- (1) Each violation of this part or of any regulations, orders, or rulings promulgated or made pursuant to this part, shall constitute a misdemeanor.
- (2)
 - (a) A political subdivision or agency adopting zoning regulations under this part may institute in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any

violation of this part, or of airport zoning regulations adopted under this part, or of any order or ruling made in connection with their administration or enforcement.

- (b) The court shall adjudge to the plaintiff the relief, by way of injunction or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this part and of the regulations adopted and orders and rulings made pursuant to them.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-413 Purchase or condemnation of air rights or navigation easements.

A political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, an air right, navigation easement, or other estate or interest in the property or nonconforming structure or use in question if:

- (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;
- (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this part; or
- (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-414 Exchange of private property near federal airports.

- (1) If any governmental entity or agency adopts any measure which infringes upon the use of privately owned property, or which is designed to assure development compatible with the continued operation of a federal airport, the owner of that private property, if the owner has continuously owned the land from the date of the measure and whose land is wholly or partially within the area directly affected by the measure, may request an exchange of the affected land for state land outside the affected area.
- (2)
 - (a) Upon a request pursuant to Subsection (1), the Board of State Lands, without cost to the affected landowner, shall appraise the subject land taking into consideration the fair market value of any and all improvements, and may offer a land exchange at the earliest practicable time.
 - (b) The state may identify at least one, and may identify up to three parcels of state land of a substantially equal value to the land requested to be exchanged, and which can otherwise be exchanged in a manner which will not prejudice the interest of the state and which will not be inconsistent with proper management, control, protection, and use of state land.
 - (c) The state may provide for the use of qualified appraisers to expedite the process of the request.

Renumbered and Amended by Chapter 270, 1998 General Session

72-10-415 Severability clause.

If any provision of this part or its application to any person or circumstances is held invalid, this invalidity does not affect the provisions or applications of the part which can be given effect without

the invalid provision or application, and to this end the provisions of this part are declared to be severable.

Renumbered and Amended by Chapter 270, 1998 General Session